

**DRINKING WATER SYSTEMS IMPROVEMENTS**

**REVOLVING LOAN FUND PROGRAM**

**FINAL**

**REGULATIONS**

**PRESENTED TO THE BOARD FOR ADOPTION**

**February 13, 2009**



**LOCAL GOVERNMENTS AND RURAL WATER SYSTEMS**

**IMPROVEMENTS BOARD**

**P. O. BOX 1700, SUITE U232**

**JACKSON, MISSISSIPPI 39215-1700**

**<http://www.msdh.state.ms.us/srf>**

**PHONE 601/576-7518**

**FAX 601/576-7974**

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IMPROVEMENTS BOARD

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## I. INTRODUCTORY PROVISIONS

### A. Scope of Regulations.

These regulations, adopted pursuant to Section 41-3-16, Mississippi Code of 1972, as amended, shall govern the Local Governments and Rural Drinking Water Systems Improvements Revolving Loan Fund (DWSIRLF) Program. These regulations may be superseded by the loan agreement, when a variance or exception is made by the Local Governments and Rural Drinking Water Systems Improvements Board (Board) and when not in conflict with any state or federal laws or executive orders.

### B. Effective Date of Regulations.

These amended regulations are effective ~~July 15, 2007~~ March 13, 2009.

### C. Definitions.

The following words and terms, when used in these regulations, will have the following meanings, unless the context clearly indicates otherwise:

- (1) Act - The Local Governments and Rural Water Systems Improvements Revolving Loan Program Act, Section 41-3-16, Mississippi Code of 1972, as amended.
- (2) Allowable Costs - Those project costs that are eligible, reasonable, necessary, allocable to the project, within the established project scope and budget, in conformance with the DWSIRLF regulations and approved by the Mississippi State Department of Health (Department).
- (3) Authorized Representative - The signatory agent of the applicant authorized and directed by the applicant's governing body to make application for assistance and to sign documents, on behalf of the applicant, required to undertake and complete the project. The signatory agent must be a member, or an employee of the applicant's governing body, and may not be under a separate contract with the applicant at any time during the execution of the project.
- (4) Binding Commitment - A DWSIRLF loan offer, as described in these regulations.
- (5) Board - The Local Governments and Rural Water Systems Improvements Board.
- (6) Change Order - The documents executed by the loan recipient and the construction contractor, upon recommendation of the registered engineer if required by the contract documents, authorizing a change, alteration, or variance in the plans, specifications, and contract documents, including, but not limited to, additions or deletions of work to be performed pursuant to the contract or a change in costs or time for work performed pursuant to the contract.
- (7) Construction - Any one or more of the following: erection, building, acquisition,

alteration, remodeling, improvement or extension of drinking water systems.

- (8) Department - Mississippi State Department of Health and staff, and their designated representatives.
- (9) DWSELF - The Drinking Water Systems Emergency Loan Fund.
- (10) DWSIRLF - The Drinking Water Systems Improvements Revolving Loan Fund.
- (11) Eligible Applicant - A county, incorporated municipality, district or other water organization that has been granted tax exempt status under either federal or state law, which has the authority to collect, treat, store and distribute piped water for human consumption, has the authority under state law to receive DWSIRLF loan assistance, and has the ability to comply with these regulations and the requirements of the loan agreement.
- (12) Eligible Cost - Eligible costs are those costs in which DWSIRLF loan participation is authorized pursuant to applicable statute.
- (13) Financial Assistance - Loans by the Board from the DWSIRLF.
- (14) Improvements - Making improvements to drinking water systems, including construction of new drinking water systems or repair of existing drinking water systems.
- (15) Loan Agreement - An agreement between the Board and the loan recipient through which the Board provides DWSIRLF funds for eligible assistance and the recipient promises to repay the principal sum and interest back to the DWSIRLF over a period and at an interest rate established in the loan agreement.
- (16) Loan Applicant - A county, incorporated municipality, district, or other water organization that makes application for assistance from the DWSIRLF program.
- (17) Loan Recipient - A county, incorporated municipality, district, or other water organization that receives a loan from the DWSIRLF program.
- (18) May - whenever used in the context of an action to be taken by the loan applicant/recipient the word will be interpreted as optional but is not mandatory.
- (19) May Not - whenever used in the context of an action by the loan applicant/recipient such action is prohibited by these regulations.
- (20) Must - whenever used in the context of an action to be taken by the loan applicant/recipient the word will be interpreted as mandatory.
- (21) PWSS - Public Water System Supervision.

- (22) Plans, Specifications and Contract Documents - The engineering description of the project including engineering drawings, maps, technical specifications, design reports and construction contract documents in sufficient detail to allow contractors to bid on and construct the work.
- (23) Priority System - The criteria established in the Board's Intended Use Plans (IUP) for scheduling and ranking projects for which DWSIRLF loan assistance is requested.
- (24) Project - The scope of work for which assistance is offered under the DWSIRLF.
- (25) Project Completion - The date of the final construction observation as performed by the Department for the purpose of an allowability determination.
- (26) Protest - A written complaint to the loan recipient concerning the loan recipient's solicitation or award of a contract. The protest must be filed with the loan recipient by a party with a direct financial interest adversely affected by a loan recipient's procurement action.
- (27) Public Water System (PWS)- A system for the provision to the public of piped water for human consumption, if such a system has at least fifteen service connections or regularly serves at least twenty-five individuals. This includes any collection, treatment, storage and distribution facilities under the control of the operator of a ~~public water system~~PWS or used primarily in connection with a ~~public water system~~PWS.
- (28) Rate Structure - Will have the same meaning as User Charge System.
- (29) Registered Engineer - The engineer, registered by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors, retained or employed by the loan recipient to provide professional engineering services during the planning, design, and/or construction of the project.
- (30) Repayment - Principal and interest payments on DWSIRLF loans which must be credited directly to the DWSIRLF.
- (31) Revolving Fund - The Local Governments and Rural Water Systems Improvements Revolving Loan Fund, created pursuant to Section 41-3-16(2)(a), Mississippi Code of 1972, as amended.
- (32) SDWA - The federal Safe Drinking Water Act, and any subsequent amendments.
- (33) Unilateral Change Orders - Change Orders executed only by the loan recipient and identified as such, in accordance with the contract documents.
- (34) User Charge System - The system by which the loan recipient charges users of the water system rates that produce adequate revenues required for operation, maintenance, replacement of major equipment, retirement of existing debt and

repayment of the DWSIRLF loan for the project and must identify the dedicated source of funds, the basis of payment, and user charges for each user class.

- (35) Water System Viability Analysis - A managerial, operational, financial and technical analysis of a water system to determine whether the system has the capability to reliably meet performance requirements and financial obligations on a long term basis.
- (36) Will - Whenever used in the context of an action by the loan applicant/recipient the word will is to be interpreted as mandatory.



## II. PROGRAM REQUIREMENTS

### A. Eligible Applicant Determination.

To be eligible for financial assistance, an applicant must meet the definition of an eligible applicant as described in Section I.C.(12) of these regulations, as determined by the Department.

### B. Obligation Period.

Federal funds allotted to the State will be available for obligation for a period of one year after the close of the federal fiscal year for which the funds are authorized, or as otherwise established by federal law.

### C. Reserves.

A percentage or amount of the State's Drinking Water SRF Federal Capitalization Grant will be reserved each fiscal year for administration of the fund consistent with the Act and state law. Other reserves as established under the SDWA will also be established.

### D. Public Comment and Review.

In accordance with the Act, the Board will provide for public comment and review and may take into consideration any comments prior to adoption of the annual Intended Use Plan, including the Priority List and the Priority System. After adoption by the Board, modification to these documents may be adopted by the Board as provided for in the Intended Use Plan without further public comment and review.

### E. DWSIRLF Uses.

The DWSIRLF may be used for the following purposes, subject to the intended use plan for a given fiscal year.

#### (1) To make loans on the conditions that:

- (a) Such loans are made at or below market interest rates, at terms not to exceed 20 years after project completion, or as otherwise allowed by the SDWA;
- (b) Monthly principal and interest repayments will commence as further described in Section III.I. of these regulations;
- (c) The recipient of a loan must establish a dedicated source of revenue for repayment of loans; and
- (d) The fund will be credited with all payments of principal and interest on all loans.

- (2) For the reasonable costs of administering the DWSIRLF program and conducting activities under this Act, subject to any limitations established in the SDWA;
- (3) For other uses as allowed under the SDWA; and
- (4) To earn interest on fund accounts.

F. State Capitalization Grant Application.

After the Board adopts each annual Intended Use Plan, including the Priority System and Priority List, the State Health Officer or his designee will submit these items with an application for any available federal Drinking Water State Revolving Fund Capitalization Grant.

G. Federal Requirements.

All projects which receive loan assistance from the DWSIRLF must meet the requirements of the SDWA, the cross-cutting laws and authorities specified in Appendix H, and all related implementing regulations. The Department may establish state procedures acceptable to EPA.

H. Intended Use Plan.

The Board will prepare an annual Intended Use Plan (IUP), which describes how the Board intends to use DWSIRLF program funds to support the overall goals of the DWSIRLF program, in accordance with the federal requirements found in 40CFR Part 35, Subpart L, Section 35.3555. The Board will seek public review and comments during the development of this IUP and will take all comments received into consideration before adoption of the final IUP.

I. DWSIRLF Financing.

The DWSIRLF has been established to provide low interest loans to assist and encourage communities to make improvements to their drinking water systems. Conditions of these loans are itemized in Section II.E.(1) of these regulations. Basic DWSIRLF financing requirements are as follows:

- (1) DWSIRLF loans may be limited at the discretion of the Board based on funds availability or as otherwise stated under state law.
- (2) The applicant's project must be on the fundable or planning portion of the current year's Priority List.
- (3) Terms of any DWSIRLF assistance will be as established in the ~~Intended Use Plan~~ IUP for the projects to be funded in each fiscal year and will be further established in the loan agreement.
- (4) The applicant must comply with the requirements of the SDWA and all applicable

state and federal laws, requirements and regulations.

- (5) The applicant must establish a dedicated source of funds for repayment of the loan.
- (6) The applicant must not be in violation of any provision of a previously awarded DWSIRLF or DWSELF loan agreement or any other loan agreement.
- (7) As determined by the Department, the applicant has complied or will comply with any technical assistance recommendations provided by the Department.
- (8) Except for program administration expenses, funds will not be disbursed from the DWSIRLF until a loan recipient has entered into a loan agreement with the Board.

J. Responsibility.

The applicant/loan recipient is responsible for the proper planning, design, construction, operation, maintenance, replacement, performance, and fiscal integrity of the project. The Department's approval of any document does not relieve the applicant/loan recipient or any others of any liabilities or responsibilities. Department approval of any document is for loan eligibility/allowability purposes only and does not establish or convey any such liability or responsibility.

K. Other Approvals.

The applicant (or loan recipient) must obtain approval of all necessary documents from each state, local, and federal agency having jurisdiction over or funding in the project, if so required by that agency.

### III. PROJECT REQUIREMENTS

All drinking water system projects funded by the DWSIRLF must comply with the following requirements.

#### A. Facilities Planning.

##### (1) Preplanning Guidance and Conference.

The Department will provide facilities planning guidance to the loan applicant/recipient and/or its registered engineer, who may request a preplanning conference with the Department.

##### (2) Contents of a Facilities Plan.

All facilities plans must contain that information described in the Department's guidance for DWSIRLF facilities plans, including updates, and as may be required by Department pursuant to review of the facilities plan. The facilities plan must also be prepared in accordance with Appendices A, C, H, I, K, M, and N of these regulations.

The facilities plan must also include a financial capability summary in accordance with Departmental guidance and must demonstrate that there are no proposed eligible costs that could be avoided or significantly reduced by appropriate consolidation of that public water system with any other public water system. Should an applicant desire to omit or modify a portion of the facilities plan as required by the Department's guidance for DWSIRLF facilities plans, approval by the Department of such omission or modification must be obtained prior to completion and submission of the facilities plan. The facilities plan must bear the seal of the registered engineer responsible for preparation of this document.

The loan applicant is required to hold a public hearing on the facilities plan. A notice for the hearing must be published in an appropriate local newspaper at least 30 days prior to the hearing date, and the plan shall be available for public review during this period. Topics to be discussed at the hearing include the facilities to be built, why they are needed, where they will be built, how much they will cost, the average monthly user charge, and the environmental impact. If a project change is significant enough to require a Finding of No Significant Impact (FONSI) amendment, a new public hearing may be required.

##### (3) Environmental Review Process.

Prior to approval of the facilities plan, the Department will complete the appropriate portions of the environmental review procedure described in Appendix C of these regulations, based upon the evaluation of environmental impacts of the selected alternative as described in the facilities plan.

(4) Submittal of Facilities Plan.

By the date specified in the Priority System the applicant must submit the complete facilities plan to the Department for its review and approval.

(5) Approval of Facilities Plan.

The Department will approve the facilities plan after completing the appropriate environmental review procedure and after determining that all facilities planning requirements have been met and are approvable.

B. Application for DWSIRLF Loan.

(1) Pre-application Guidance and Conference.

The Department will provide a loan application package to the potential loan applicant and/or its registered engineer. The potential loan applicant and/or its registered engineer may request a pre-application conference with the Department as early in the application process as practical.

(2) Contents of Application.

All documents listed below must be complete and approvable when submitted to the Department. When forms are provided by the Department, these forms must be used, and they may not be altered. The DWSIRLF loan application may request assistance only for costs that are allowable in accordance with Appendices A and B of these regulations and may include a construction contingency, as determined by the Department, in the project budget. The application must include a Project Cost Breakdown. ~~any administrative fee charged to the loan recipient by the Department.~~ A complete application package must conform to these regulations, including all Appendices, and must include the following:

- (a) A complete DWSIRLF loan application form with original signature.
- (b) A draft user charge system and ordinance/corporate resolution.
- (c) All proposed or executed contracts for bidding and construction phase professional services.
- (d) A procurement certification from the loan applicant and the loan applicant's legal counsel.
- (e) A financial capability summary using the most recent cost estimates, if different from planning estimates.

- (f) Completion of the intergovernmental review process as described in Appendix K of these regulations and the final approval letter from the State Clearinghouse.
  - (g) A legal certification from the loan applicant and the loan applicant's legal counsel.
  - (h) A certified copy of a resolution by the loan applicant's governing body which 1) authorizes the submission of the application and 2) designates an authorized representative or office to make application for assistance and to sign documents on behalf of the applicant, is required to undertake and complete the project.
  - (i) A copy of all existing or proposed interlocal agreements related to this project, if applicable. Such agreements must be executed by all appropriate parties and must be approved by the Department prior to loan offer.
  - (j) A certification regarding debarment, suspension and other responsibility matters, in accordance with Appendix F of these regulations.
  - (k) Documentation of its tax exempt status under either federal or state law, if the loan applicant is a water organization other than a county, incorporated municipality, or district.
  - (l) An Internal Revenue Service Form W-9.
  - (m) All waste disposal permit applications, if applicable.
  - (n) All other forms, documents, and supporting information required by the Department.
- (3) Submittal of application.

By the date specified in the Priority System the applicant must submit the application to the Department.

#### C. Offer of DWSIRLF Loan.

- (1) Upon determination by the Department that (a) all applicable requirements of the DWSIRLF loan application have been met, (b) the facilities plan has been approved, (c) the project is on the current year's priority list, and (d) funds are available for the amount of the DWSIRLF loan application, the Board Chairman or his designee will execute and transmit a DWSIRLF loan offer to the loan recipient. In addition to the estimated allowable project costs as described in Appendices A and B of these regulations, the loan offer may include a construction contingency, as determined by the Department, in the project budget.

- (2) Upon receipt of the DWSIRLF loan offer, the loan recipient must completely execute and return it to the Department within the time frame established in the DWSIRLF loan offer. The loan offer becomes void if not executed and returned within the time frame specified, unless extended by the Board Chairman or his designee.

D. Engineering Design.

- (1) Predesign Guidance and Conference.

The Department will provide design guidance to the loan applicant/recipient and/or its registered engineer, who may request a pre-design conference with the Department.

- (2) Plans, Specifications and Contract Documents.

- (a) General Requirements.

Plans, specifications, and contract documents must be prepared for all appropriate elements of the project. These documents must conform to Department requirements, to Appendices A, C, D, E, F, H, I, J, K, L, M, N, and O of these regulations, and to the requirements of the most recent version of the Departmental document "Recommended Minimum Design Criteria For Community Water Supplies," and "Guidance for the Design of DWSIRLF Funded Drinking Water Facilities," or their successor(s). Other recognized engineering publications may be used for unit processes or technologies not described therein.

Plans, specifications, and contract documents must also conform to such contract language, conditions, and forms as may be required by the Department. The plans, specifications, and contract documents must bear the seal of the registered engineer responsible for preparation of these documents.

- (b) Contents.

In addition to the above, the plans, specifications, and contract documents must contain the following:

- (i) Provisions assuring compliance with these regulations and all relevant federal and state laws.
- (ii) Forms by which the bid bond, performance bond and payment bonds will be provided.
- (iii) A contractor's assurance which must warrant compliance by the contractor with all applicable federal laws and regulations and all laws of the State of Mississippi and all regulations and published policies of the Board.

- (iv) Provisions providing for the applicant to retain a certain percentage of the progress payments otherwise due to the contractor, in accordance with state law.
  - (v) Provisions requiring the contractor to obtain and maintain the appropriate insurance coverage.
  - (vi) Provisions giving authorized representatives of the Department access to all such construction activities, books, records, documents and other evidence of the contractor for the purpose of inspection, audit and copying during normal business and/or working hours.
  - (vii) Provisions for compliance with the Disadvantaged Business Enterprise (DBE) ~~MBE/WBE~~ requirements as described in Appendix E of these regulations.
  - (viii) Provisions for change orders.
  - (ix) Those conditions, specifications, and other provisions set forth or required by the Department.
  - (x) Provisions for liquidated damages.
  - (xi) Provisions including water meters on new distribution systems.
  - (xii) When so required by federal law or regulation, provisions mandating the purchase of American-made equipment and products.
- (3) Submittal of Plans, Specifications, Contract Documents and Related Items.

By the dates specified in the loan agreement, the recipient must submit the following items to the Department:

- (a) Complete plans, specifications and contract documents.
- (b) A copy of the issued National Pollutant Discharge Elimination System (NPDES) permit or the state operating permit, if required.
- (c) A copy of the issued solid waste disposal permit, if required.
- (d) Written waivers from all adjoining property owners when it is not possible to provide required buffer zones, if the project includes drinking water sludge treatment facilities, in accordance with Appendix N.



- (e) For all loan eligible real property, completion of the appropriate requirements of The Uniform Act as implemented by federal regulation 49 CFR Part 24.101(a)(1) and (2) as applicable, an appraisal (as set forth in the Board's land acquisition guidance documents), and a written request to the Department for approval of the purchase price of all loan eligible real property. Prior to advertisement for construction bids, the loan recipient must secure approval of the purchase price by the Department, must complete purchase of all loan eligible real property and easements, and must submit clear title certificates from the loan recipient and title counsel for all such loan eligible property.

(4) Approval of Plans, Specifications and Contract Documents.

The Department will approve the plans, specifications, and contract documents upon determining that these documents:

- (a) Appear to conform to the requirements of these regulations,
- (b) Appear to be approvable pursuant to a technical review by the Department, and
- (c) Appear to be consistent with the approved facilities planning documents and environmental determinations required by these regulations.

E. Construction Bidding and Loan Amendment.

- (1) Within the time frame established in the loan agreement, the loan recipient must
  - (a) Secure Department approval of the plans, specifications and contract documents.
  - (b) For all loan ineligible real property and easements (including power and other utilities), complete the appropriate requirements of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (The Uniform Act) as implemented by federal regulation 49 CFR Part 24.101(a)(1) and (2) as applicable and submit certification forms from both the loan recipient and the title counsel which indicate that all such loan ineligible real property and easements for the entire project have been secured by clear title.
  - (c) Secure all local funds necessary for the project and submit proof of such.
  - (d) Upon completion of (a) through (c) above and issuance of any other permits or clearances required for the project, advertise the project for construction bids. All procurement actions by the loan recipient must comply with state law and these regulations.

- (2) Upon receipt of construction bids, the loan recipient must then submit a) the completed DBE ~~MBE/WBE~~ documentation as required by Appendix E of these regulations, b) the completed bid package, c) all necessary executed contracts and amendments as described in Section III.B(2)(c) of these regulations, and d) a loan agreement amendment request (consistent with as-bid construction costs, a construction contingency as determined by the Department, and any professional services contracts and amendments) to the Department within the time frame established in the loan agreement.
- (3) Upon receipt of the items listed in Section III.E.(2) above, the Department will review them to determine whether any request for an increased loan amount is justified and allowable and whether funds are available. After determining that all documents are approvable, the Department will transmit to the loan recipient approval to execute the construction contracts.
- (4) After receipt, review and approval of the loan agreement amendment request, the Department may prepare and transmit an amended DWSIRLF loan offer to the loan recipient. The loan offer will include in the project budget (a) the approved as-bid amounts for construction, (b) the final allowance amounts for professional services in accordance with Appendix B of these regulations, and (c) a construction contingency as determined by the Department, ~~and (d) the original administrative fee.~~ Upon receipt of the amended DWSIRLF loan offer, the loan recipient must completely execute and return it to the Department within the timeframe established in the offer letter. After execution of the amended DWSIRLF loan offer, the DWSIRLF loan amount may not be increased except for funding of a subsequent phase of a segmented project as identified in the Intended Use Plan for a later fiscal year. Any increased project costs in excess of the amended DWSIRLF loan amount must be paid by the loan recipient from sources other than DWSIRLF loan funds.

F. Construction.

- (1) Awarding Construction Contracts and Preconstruction Conference.

Upon receipt of the approval to execute the construction contracts and to issue the notice to proceed, the loan recipient must do so and must transmit a copy of the executed construction contracts and the notice to proceed to the Department within the time frame specified in the loan agreement.

The loan recipient will be responsible for assuring that every appropriate procedure and incidental legal requirement are observed in advertisement for bids and awarding the construction contracts. The plans, specifications, and executed contract documents must not vary from those approved by the Department.

The loan recipient may arrange and hold a preconstruction conference and must allow attendance and participation by the Department if such is held.

- (2) Observation During Construction.

During all times that construction work is being performed, the loan recipient must provide for full-time observation of the project by the registered engineer or his staff and must require the registered engineer's assurance that the work is being performed in a satisfactory manner in accordance with the loan agreement and the approved plans, specifications, contract documents, and approved change orders. Less than full-time observation may be allowed when approved by the loan recipient.

The Department is authorized to observe the building of any project at any time for compliance with the terms of the loan agreement and to determine if the loan recipient is assuring that plans, specifications and contract documents are being followed. Such observation will not subject the Department to any legal action for claims, damages or any other liability. Also, such observation will not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents or the registered engineer from determining compliance with the requirements of the contract documents or the loan recipient from insuring compliance with the terms of the loan agreement.

The contractor, registered engineer, and the loan recipient must furnish the Department with every reasonable opportunity and means for determining whether the loan recipient and registered engineer are assuring that the work is in accordance with the requirements of the approved plans, specifications and contract documents. The Department is authorized to observe and require submission by the loan recipient of daily logs, full scale record drawings, file notes, and any other documents prepared by any party in relation to the DWSIRLF funded project.

(3) Observation of Materials and Equipment.

The Department is also authorized to observe all equipment and materials furnished, including observation of the preparation or manufacture of the equipment and materials to be used.

(4) Construction Deficiencies.

- (a) In the event that it appears to the Department that the loan recipient and registered engineer are not assuring that the construction work, materials, equipment or supplies are in conformity with approved plans and specifications, the Department may determine such work unallowable for DWSIRLF loan participation, unless the loan recipient takes such action, through the registered engineer if applicable, in the manner provided for in the construction contract to correct any deficiencies.
- (b) The Department may immediately withhold DWSIRLF loan payments for such time that it appears that the loan recipient and registered engineer are not assuring that construction work, materials, equipment or supplies are in accordance with the approved plans, specifications and contract documents,

and may require the loan recipient to repay any previously paid amounts related to such work within 30 days of such notification.

(5) Change Orders.

(a) General.

In the event a determination is made by a loan recipient after a construction contract is executed that changes or modifications to the original contract are necessary or would better serve the purpose of the loan recipient, such loan recipient may, at its discretion, execute such change orders pertaining to the construction that are necessary under the circumstances, as provided in the contract documents and when in accordance with state law.

Change orders must not change, vary, or alter the basic purpose or effect of the project unless allowed by the Department. Change orders must be technically adequate, the costs must be necessary and reasonable, and eligible/ineligible costs must be appropriately separated.

(b) Change Order Submittals.

After completion of the claims resolution and/or change order negotiation process between the loan recipient and the contracting party, a fully executed change order must be submitted to the Department for review and approval, in order to obtain a DWSIRLF loan eligibility/allowability determination.

If any change order is submitted to the Department that is not complete and fully executed by the loan recipient, the contracting party, and the registered engineer if appropriate, the Department may return such change order without review. However, unilateral change orders executed by the loan recipient, and the registered engineer if appropriate, and identified as such, that are issued in accordance with the contract documents may be submitted to the Department for review and approval, in order to obtain a DWSIRLF loan eligibility/allowability determination.

The loan recipient may submit a complete and fully executed change order which has been executed conditional upon a DWSIRLF loan eligibility/allowability determination by the Department.

All change orders must be submitted to the Department for review and approval in a timely manner. The Department may withhold payments to the loan recipient if change orders are not submitted in a timely manner.

If possible, approval of a change order should be secured from the Department before the work is started, particularly for change orders including time extensions as per Section III.F.(5)(d) below. Approval may

also be secured after the work is started; however, the loan recipient must bear the cost if the work is determined to be ineligible or unallowable.

When the eligible cost of a project will be significantly reduced by a change order or change orders, the Department may issue an amendment to the loan agreement decreasing the loan amount, and the loan recipient must execute such amendment within the time frame established by the Department.

(c) Department Review.

In order to allow the Department to perform a technical and loan allowability review, requests for change order approvals must conform to Department guidance, requirements and regulations.

(d) Time Extensions.

Change orders which include time extensions exceeding 30 days beyond the original contract completion date, and/or documentation that the loan recipient is implementing all legal remedies provided in the contract documents for failure to complete construction when required, must be submitted to the Department as specified in Section III.F(7)(i) of these regulations. Justification for contract time extensions included in a change order must be prepared, but need not be submitted to the Department unless the total time extensions for the contract exceed 30 days after the original contract completion date, in which case justification for all time extensions must be submitted to the Department for an allowability determination.

(6) Contractor Bankruptcy or Default.

In the event of a contractor bankruptcy or default, any proposed agreements with the bonding company (other than the bonding company serving as general contractor or fully bonding another contractor acting as their agent) must be submitted for DWSIRLF loan allowability determination by the Department prior to execution. If the loan recipient determines that re-award of the construction contract or a portion thereof is necessary due to contractor bankruptcy or default, such proposed re-award contracts must be submitted for DWSIRLF loan allowability determination by the Department prior to execution. The loan recipient will be responsible for assuring that every appropriate procedure and incidental legal requirement are observed in advertising for bids or otherwise re-awarding a construction contract, if this course of action is taken.

(7) Construction Phase Submittals, Approvals, and Actions.

The following submittals, approvals, and actions will be required during the construction phase of the project. The Department may establish other time frames within the loan agreement when properly justified.

- (a) Within 90 days after approval of plans, specifications and contract documents by the Department (1) all construction related contracts must be advertised for bids and proof of such advertisement must be submitted, (2) all local funds necessary for the project must be secured, and proof of such local funds must be submitted, and (3) clear site certificates from the loan recipient and title counsel for all real property must be submitted.
- (b) Within 120 days after approval of plans, specifications and contract documents by the Department, the loan recipient must open bids on all construction related contracts.
- (c) Within 14 days after receipt of bids, the loan recipient must submit all DBE ~~MBE/WBE~~, EEO, and related documents.
- (d) Within 21 days after receipt of bids for new construction, the loan recipient must submit all bid packages.
- (e) Within 60 days after receipt of bids, the loan recipient must execute all construction contract documents, must submit a copy of all executed contract documents, and must issue and submit a copy of the notice to proceed on all such contracts.
- (f) By the date initially established in the loan agreement (which is based upon approximately 50% of contract time) the loan recipient must submit (1) a completed operation and maintenance manual for all drinking water treatment facilities to be constructed in whole or in part with DWSIRLF funds and (2) a plan on how the loan recipient will insure that operators are hired and certified in accordance with state law by the date in (g) below.
- (g) By the date initially established in the loan agreement (which is based upon approximately 90% of contract time) the loan recipient must (1) enact the approved user charge system and ordinance/corporate resolution and submit proof of such enactment, (2) if applicable, secure approval of the operation and maintenance manual, (3) hire all operators, and (4) submit their names and submit the operator certification numbers for the operators certified in accordance with state law.
- (h) Within 10 days after construction completion of each construction contract, the loan recipient must notify the Department of construction completion.
- (i) The Department will perform a final construction observation within 30 days after the current construction contract completion date, unless further delayed by the Department pursuant to review of the loan recipient's request and justification for such delay. Should the Department decide that the construction completion is being unreasonably delayed, a final construction observation may be immediately performed by the Department. The final

construction observation by the Department is only for the purpose of determining final loan allowable costs.

Within 30 days after the current construction contract completion date, all change orders which include time extensions exceeding 30 days beyond the original contract completion date, and/or documentation showing the loan recipient is implementing all legal remedies provided in the contract documents for failure to complete construction when required, must be submitted to the Department for an allowability determination.

- (j) Within 30 days after the final construction observation performed by the Department, the loan recipient must submit: final payment request; approvable summary change orders for all construction contracts; full scale record drawings with all revisions shown and noted for the entire project funded in whole or in part with DWSIRLF funds; the registered engineer's certification of compliance with plans, specifications, and contract documents; appropriate bacteriological test results; final construction phase professional services contract amendments, if any; and all other administrative forms and documents required by the loan agreement. **Loan payment requests submitted after this date are not allowable, regardless of when the costs were incurred.**
- (k) Any other submittals or actions required by the loan agreement must be performed when so required and are subject to review and approval by the Department.

G. Post Construction Phase.

- (1) Following final payment of DWSIRLF loan funds to the loan recipient, or upon expiration of any deadlines established by the loan agreement or the Department, the Department or other designated parties may perform an audit of the DWSIRLF loan project for the purpose of determining compliance with the loan agreement and to determine final allowable costs, payments made to date, and any additional payments due the loan recipient or repayment due the Department.
- (2) Upon completion of the DWSIRLF audit (or if an audit is not performed, following final payment of DWSIRLF loan funds to the loan recipient, or upon expiration of any deadlines established by the loan agreement or the Department), the Department will transmit to the loan recipient a copy of the audit report, if performed, a final determination of allowable costs and payments due the loan recipient or repayments due the State, and a final loan agreement between the loan recipient, the Board, and, if applicable as established under state law, the State Tax Commission.
- (3) Unless, within 30 days after the date of the above final determination, the loan recipient submits a written appeal of the final determination, including a written justification of the reason for the appeal, and supporting documentation for any disputed costs of the final determination, the final determination of allowable costs

will become the final allowable costs for purposes of DWSIRLF loan payments and the loan agreement, and the loan recipient must execute and submit the final loan agreement.

- (4) Should an appeal be submitted in accordance with (3) above, the disputes procedures established in Appendix G of these regulations will be followed in order to resolve the dispute and establish the final allowable costs. Upon resolution of a dispute of the final determination, the Department will transmit to the loan recipient a revised final loan agreement. The loan recipient must execute and submit to the Department the final loan agreement within the deadline established by the Department.
- (5) Upon receipt of an executed final loan agreement from the loan recipient, repayment of the DWSIRLF loan will commence, or if applicable as established under state law, the Department will transmit the loan agreement to the State Tax Commission for execution and return to the Department.
- (6) Upon such execution and return, the Department will transmit a copy to the loan recipient, and repayment of the DWSIRLF loan will commence under the terms of the executed final loan agreement.

#### H. Payments to DWSIRLF Loan Recipients.

Payments from the DWSIRLF may be made to DWSIRLF loan recipients under the following conditions:

- (1) Payments may be requested by and made only to loan recipients, in accordance with the loan agreement and the loan recipient's contracts for eligible and allowable services and construction for work performed within the project scope and budget period.
- (2) Payments may be requested no more often than on a monthly basis, except as required by state law or as allowed by the Department.
- (3) The loan recipient must deduct from all DWSIRLF payment requests the amount of funds provided or to be provided from all other state and federal agency funding sources for allowable DWSIRLF project costs.
- (4) Payment requests must be submitted by the loan recipient to the Department and must include the following:
  - (a) DWSIRLF payment request form with original signature;
  - (b) Cumulative invoices for all allowable costs for which payment is requested except for the facilities planning and design allowance as determined by Appendix B of these regulations;
  - (c) Any other documents required by the loan agreement;



- (5) The timing of DWSIRLF payments will be as follows, provided the loan recipient is in compliance with the requirements of these regulations and all provisions of the loan agreement.
- (a) Upon execution of the loan agreement, 50% of the estimated planning and design allowance, as determined by Appendix B of these regulations, may be requested and paid.
  - (b) Payments for eligible land may be requested and paid immediately after loan agreement execution, provided the Department has approved the purchase price and provided the loan recipient has submitted a bona fide option to purchase.
  - (c) Upon (1) approval of all plans, specifications, and contract documents, and (2) submittal of clear site certificates from the loan recipient and title counsel for all loan eligible and ineligible real property, the remainder of the estimated planning and design allowance may be requested and paid.
  - (d) Upon execution and submittal of all construction contracts within the project scope and upon issuance and submittal of the notice to proceed on all such contracts, any increase between the estimated and final planning and design allowance may be requested and paid. Any overpayment will be recovered in accordance with Section III.(H)(6) of these regulations.
  - (e) Payments for construction phase professional services allowance, as determined by Appendix B of these regulations, may be requested and paid based upon incurred allowable costs as supported by invoices in accordance with the executed contracts. Such requested payment amounts are subject to verification by the Department. No more than 95% of the total construction phase professional services allowance will be paid until the requirements of Sections III(F)(7)(h), (i), and (j) of these regulations have been met.
  - (f) Payments for allowable construction work may be requested and paid based upon in-place work or materials and equipment delivered to the construction site, as specified in the construction contract, as supported by invoices and verified as accurate by the registered engineer and the loan recipient, less any retainage. Such requested payment amounts are subject to verification by the Department.
- (6) Any payments made to the loan recipient which are at any time determined by Department to be for costs not in accordance with the loan agreement, for ineligible or unallowable costs, or for costs related to waste, fraud, abuse or illegal acts under state or federal law must be repaid to the DWSIRLF fund within 30 days of such notification by the Department. Interest may be charged on such delinquent repayments after expiration of the 30-day period at a rate of ten (10) percent per

annum, compounded monthly. Alternatively, the Department may withhold such amounts from subsequent payment requests.

I. DWSIRLF Loan Repayment Requirements.

All DWSIRLF loan repayments are subject to the following requirements:

- (1) Interest on amounts paid to the loan recipient shall commence on the last construction contract completion date as established in the initial loan agreement for the project, or one year after the date in the initial loan agreement for issuance of the notice to proceed for the earliest construction contract, whichever occurs first.
- (2) The amount of interest accrued between the date established in (1) above and the initiation of the repayment process will be added to the final allowable project costs to determine the principal amount to be repaid by the loan recipient.
- (3) The loan repayment period will commence as soon as practical after transmittal of the final loan agreement to the loan recipient and end as established in the ~~Intended Use Plan~~ IUP under which the project is funded. A reduced period may be provided, if so requested by the loan recipient.
- (4) Repayments are to be made by counties on a semi-annual basis through homestead exemption annual tax loss reimbursement withholdings, by municipalities on a monthly basis through state sales tax withholdings if adequate to provide such repayments, and by all other loan recipients through submission of monthly repayments in accordance with state law.
- (5) The repayment interest rate and the frequency of interest compounding will be as established in the ~~Intended Use Plan~~ IUP under which the project is funded.

## APPENDIX A

### Determination of Eligible and Allowable Costs

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A. General

Eligible costs are those costs in which DWSIRLF loan participation is authorized pursuant to applicable statute. Allowable costs are eligible costs that meet the following general criteria in addition to any specific identification as an allowable cost within Appendix A:

- (1) Are necessary and reasonable for the proper and efficient administration and construction of the project, are allocable to and within the defined scope of the project, and are not a general expense required to carry out the overall responsibilities of the loan recipient.
- (2) Are authorized or not prohibited under state or local laws or regulations.
- (3) Conform to any limitations or exclusions set forth in state laws or other governing limitations as to types or amounts of cost items.
- (4) Are consistent with policies, regulations, and procedures that apply uniformly to both state assisted and other activities of the loan recipient.
- (5) Are accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances.
- (6) Are not allocable to, or included as, a cost of any other Federal or State financed program in either the current, prior, or future period.
- (7) Are approved as allowable by the Department.
- (8) Are within the scope and budget period of the project as per the loan agreement. However, the budget period does not apply to the planning and design allowance.
- (9) Notwithstanding this Appendix, are eligible and allowable under the SDWA and any implementing federal regulations.
- (10) Are determined without regard to any previous DWSELF or DWSIRLF loan funding provided for facilities to be replaced, upgraded, or rehabilitated, except as described in Section II.I.(6) of these regulations.
- (11) Are procured in accordance with Appendix D of these regulations.

B. Construction

- (1) Allowable costs include the costs for/of:
  - (a) The following types of projects, and as further described or limited in the Intended Use Plan under which the project is funded:

- (i) projects that will facilitate compliance with national primary drinking water regulations;
    - (ii) projects that will facilitate consolidation of public water systems or the use of an alternative water supply;
    - (iii) projects that will upgrade a drinking water system; or
    - (iv) development of a public water system to replace private drinking water supplies if the water poses a significant threat to human health.
  - (b) Subagreements for construction work on drinking water systems improvements. These subagreements are the prime contracts (including any subcontracts) for such construction work and any necessary contracts for purchase of equipment, materials and supplies by the loan recipient. Should any costs for such contracts be incurred prior to loan offer, said costs will be allowable provided that the loan recipient has requested and obtained Department approval of said costs and provided that the loan agreement budget period includes the time period these costs are incurred.
  - (c) Drinking water distribution lines on drinking water distribution projects which provide drinking water to previously unserved areas, service lines between the public water main and the water meter are also allowable.
  - (d) Drinking water distribution system rehabilitation (including rehabilitation of eligible service lines) necessary to eliminate water loss or to preserve/restore the safety or integrity of the system, as determined in an approved facilities plan.
  - (e) Water system capacity equal to all water distribution system leaks that will remain in the system, as determined in an approved facilities plan.
  - (f) Drinking water systems which include service to industrial or commercial users when such works are owned by an eligible applicant.
  - (g) Buildings that house or protect water production, treatment or distribution facilities.
- (2) Unallowable costs include:
- (a) Costs for the following types of projects:
    - (i) Projects primarily for growth, development, or fire protection;
    - (ii) Projects that can be consolidated (except for projects to implement such consolidation);

- (iii) Projects for systems without adequate financial or managerial support necessary to comply with SDWA requirements and all requirements of the loan agreement; and
- (iv) Projects for drinking water systems which serve federal users exclusively, or almost exclusively.
- (b) Construction and construction related costs which are incurred after the Department approved eligible contract completion date (including approved time extension change orders), unless approved by the Department pursuant to Section III.F.(5)(d) of these regulations.
- (c) Bonus payments that are part of the construction contract for completion of building before a contractual completion date, unless required by state law.
- (d) Administration buildings.

C. Equipment, Materials and Supplies

- (1) Allowable costs include the costs of:
  - (a) A reasonable inventory of chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.
  - (b) Necessary and reasonable safety equipment, provided the equipment meets applicable federal, state, local or industry safety requirements.
  - (c) Constructing or installing water flow metering devices for the primary purpose of monitoring and/or billing inter-municipal or other flows or serving and billing individual residential, commercial or industrial users.
  - (d) Backflow preventers.
  - (e) Computers, display monitors, and computer software which are designed into the control system for the daily operation of the water system, used for the operational control and analysis of the water system, or specifically designed for the operation and maintenance (including the cost of developing unique operating programs for the specific loan funded project) of the treatment works.
  - (f) Specialized mobile equipment for the operation of the water system, or for the maintenance of equipment. These items include, but are not limited to:
    - (i) Portable stand-by generators.

- (ii) Portable emergency pumps to provide "pump-around" capability in the event of booster station failure or pipeline breaks.
- (2) Unallowable costs include the costs of:
  - (a) Vehicles for the transportation of the loan recipient's employees, including buses, trucks, cars, motorcycles, ATVs, golf carts, bicycles, etc.
  - (b) Items of routine "programmed" maintenance such as filters, couplings, hoses, belts, etc.
  - (c) Radios, televisions, VCRs, camcorders, and other items of a similar nature.
  - (d) Shop equipment installed at the treatment works or elsewhere.
  - (e) Distribution system maintenance equipment.
  - (f) Replacement parts.
  - (g) Furnishings, office equipment, and maintenance equipment, including chairs, desks, file cabinets, typewriters, coffee tables, telephones, office supplies, calculators, copiers, book cases, shelves and lamps, etc.
  - (h) Ordinary site and building maintenance equipment such as lawn mowers, rakes, shovels, brooms, picks, hedge trimmers, and other such equipment.
  - (i) Hand tools such as screw drivers, pliers, socket wrenches, electric drills or saws, etc.
  - (j) Computers for non-operational purposes, such as for the scheduling of equipment maintenance and replacement and for accounting and billing services.

D. Change Orders

- (1) Change orders are allowable provided the costs are:
  - (a) Necessary and reasonable.
  - (b) Within the scope of the project.
  - (c) Not caused by the loan recipient's mismanagement.
  - (d) Not caused by the loan recipient's vicarious liability for the improper actions of others.
  - (e) In conformance with the DWSIRLF regulations.

(2) Provided the above requirements are met, the following are examples of allowable change orders.

- (a) Construction costs resulting from defects in the plans, design drawings and specifications, or other contract documents only to the extent that the costs would have been incurred if the contract documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay, acceleration or disruption caused by such defects.

If the defect is realized after substantial construction work has been completed, and therefore requires rework, delay, or additional work beyond that which would have been required by defect-free drawings, the cost would still be allowable, but the additional cost of rework or delay is unallowable.

The additional cost is measured as the difference between the cost which would have been included in the bid based on defect free drawings and the actual cost of the change order.

- (b) Equitable adjustments for differing site conditions.

#### E. Professional Services

The term professional services refers to engineering, legal, administrative, and similar services.

(1) Allowable costs include the costs of/for:

- (a) Planning, application, and design. These costs include all engineering and other costs that are incurred in planning and designing the project, as well as applying for the loan. These costs include but are not necessarily limited to the following services, as determined allowable in Appendix B of these regulations. Contracts for planning, application and design costs need not be submitted to the Department.
  - (i) Preparing the facilities plan.
  - (ii) Public notification and public hearings.
  - (iii) Preparing the plans, specifications, and contract documents.
  - (iv) Value engineering.
  - (v) Preparing the draft user charge ordinance/corporate resolution and draft user charge system.
  - (vi) Preparing interlocal agreements necessary for the project.



- (vii) Surveys and all other work needed to obtain clearance or permits from all intergovernmental review agencies.
- (viii) Preparing the loan application, preparing applications for permits required by federal, state or local regulations or procedures.
- (ix) Compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act as implemented by federal regulation 49CFR Part 24.101(a)(1) and (2), as applicable.

(b) Construction Phase Professional Services

- (i) Services incurred during the advertisement, award and construction of a project to insure compliance with state purchasing laws and to insure that the project is built in conformance with the design plans and specifications. These services are primarily engineering and construction management services provided during the advertisement, award and building of the project, including observation services, materials testing (e.g., concrete strength, soil compaction, etc.) required by the specifications, inspecting and expediting the delivery of equipment and material purchased directly by the loan recipient, reviewing shop drawings and full scale record drawings, preparing change orders, payment processing, etc.
- (ii) Legal, engineering, and other services incurred by the loan recipient in deciding procurement protests and defending their decisions in protest appeals under Appendix L are allowable regardless of the outcome of the protest, provided there was not an attempt by the loan recipient to violate or circumvent state purchase laws.
- (iii) Development of an operation and maintenance manual.
- (iv) Start-up services for onsite training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management, provided these costs are incurred prior to the end of the 30 day period established in Section III.F.(7)(j) of these regulations.
- (v) Professional liability or other insurance premiums for a provider of professional services only for insurance which the provider maintains in connection with the general conduct of its business. The types and extent of coverage must be in accordance with sound business practice, and the rates and premiums must be reasonable under the circumstances but only as part of an indirect cost agreement.
- (vi) Administrative services associated with the construction project and

administering the DWSIRLF loan.

- (vii) Services, other than engineering services during construction/repairs, such as railway or highway flagmen or utility or highway inspectors, required during the building of the project, provided that
  - (1) The entity responsible for the affected railway, highway, or utility requires such services for all parties conducting similar types of work, regardless of the source of construction funding for the project, or the services are required by law.
  - (2) The cost of such services has not been included in the construction contractor's bid price.
- (viii) Engineering or other services necessary to correct defects in the facilities plan, design drawings and specifications or other documents to the extent that such costs would have been allowable for preparing defect free documents.

(2) Unallowable costs include the costs of:

- (a) Public liaison services.
- (b) Local travel (i.e., commuting expenses) between living quarters and the construction site for persons working at the site.

#### F. Claims

- (1) Allowable costs, provided the costs are properly documented, incurred and requested prior to the end of the 30 day period established by Section III.F.(7)(j) of these regulations, include:
  - (a) Change orders to the construction contract as a result of settlements, arbitration awards, or court judgements, to the extent that they would have been allowable had there not been a claim.
  - (b) The costs of assessing the merits of, negotiating, or defending a claim against the loan recipient are allowable, regardless of the outcome, provided that the matter under dispute is not the result of fraudulent or illegal actions or mismanagement on the part of the loan recipient.
  - (c) Alterations in engineering, legal, contracts etc. as a result of settlements, arbitration awards, or court judgements are allowable to the same extent that they would have been allowable had there not been a claim.
- (2) Unallowable costs include the costs of:

- (a) Claims arising from work outside the scope of the loan.
- (b) Claims resulting from fraudulent or illegal activities.
- (c) Claims resulting from mismanagement by the loan recipient.
- (d) Claims resulting from the loan recipient's vicarious liability for the improper action of others.
- (e) Settlements, arbitration awards or court judgements over the allowable costs as established in these regulations.

#### G. Mitigation

- (1) Allowable costs include the costs of:
  - (a) Mitigation of only direct adverse physical impacts resulting from construction of the project.
  - (b) Reasonable site screening necessary to comply with facilities plans and necessary to screen adjacent properties.
  - (c) Groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from construction of the project. The extent of the allowable costs for groundwater monitoring facilities is decided on a case-by-case basis and depends on the size and complexity of the project and the present and potential future use of the groundwater.
- (2) Unallowable costs include the costs of:
  - (a) Solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives and that neither enhance the function or appearance of the treatment works nor reflect regional architectural tradition.
  - (b) Land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review.

#### H. Real Property

- (1) Allowable costs include the costs of:
  - (a) Land acquired in fee simple title or by easement, from a willing seller, for:
    - (i) Water supply and/or storage purposes;

- (ii) A consolidation project; and
  - (iii) Protection of the source water of the system from contamination.
- (b) Preparation of the treatment works site before, during and, to the extent agreed on in the loan agreement, after building. These include the cost of:
  - (i) Demolition of existing structures on the treatment works site (including rights-of-way) if building cannot be undertaken without such demolition. Demolition of existing structures on the treatment works site (including rights-of-way), when not required for building the project, will be considered to be an allowable cost only if the existing structures constitute a real and present hazard to safety, public health, or water quality and when the hazard can best be abated by the removal of the existing structures.
  - (ii) Removal, relocation or replacement of utilities, provided the loan recipient is legally obligated to pay for such as a result of the DWSIRLF project under state or local law.
  - (iii) Restoration of streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction of the DWSIRLF project and is generally limited to repaving the width of trench.
- (2) Unallowable costs include the costs of:
  - (a) Any amount paid by the loan recipient for eligible land in excess of the appraised value or the loan recipient's record of negotiation.
 

An amount higher than the appraised value may be found allowable if the loan recipient provides sufficient written documentation to the Department and receives allowability approval prior to the actual acquisition.
  - (b) Removal, relocation or replacement of utilities located on land by privilege, such as a franchise, unless the loan recipient is required to pay such costs under state or local law.
  - (c) Land acquired in fee simple title or by easements for land other than that described under H.(1)(a) above, such as easements for the purpose of water distribution system expansion or improvement.
  - (d) Acquiring all or part of an existing publicly or privately owned drinking water treatment works.

- (e) The demolition of an existing structure for the convenience of the owner as a means of increasing property value or property use.

## I. Miscellaneous Costs

### (1) Allowable costs include the costs of:

- (a) Equipment rental and material costs necessary for the construction project.
- (b) Meeting specific legal requirements directly related to the project unless otherwise specified in these regulations.
- (c) Royalties associated with the procurement of the right to use, or the rights in, a patented product, apparatus, or process, provided that they are based on a published fee schedule or on reasonable fees charged to other users under similar conditions.
- (d) Training workshops/seminars for loan recipient employees that are necessary to provide instruction in operational, administrative, fiscal or contracting procedures required to complete the construction of the project. Attendance at such training workshops or seminars must occur after loan offer but before the end of the loan agreement budget period.
- (e) A reasonable project sign.

### (2) Unallowable costs include the costs of:

- (a) Salaries and benefits for the loan recipients employees.
- (b) Ordinary operating expenses of the loan recipient, including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies.
- (c) Administrative, engineering and legal activities associated with the creation of special departments, agencies, commissions, regions, districts, associations, or other entities.
- (d) Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance any portion of the project and the interest on them.
- (e) Personal injury compensation or damages arising out of the project.
- (f) Fines and penalties due to violations of or failure to comply with federal, state or local laws, regulations or procedures, and related legal expenses.

- (g) Operation and maintenance of the water system, which include but are not limited to, labor, utilities, chemicals, materials and supplies, monitoring, testing, equipment replacement, periodic payment of royalties for the right to operate under a patent, etc.
- (h) Lease payments.
- (i) Travel, by the loan recipient, unless included under an indirect cost agreement, and except as allowed under I.(1)(d) above.

J. Project Income:

- (1) Bid bond forfeitures will have no effect on the determination of allowable and unallowable costs. The loan recipient must make the determination of whether or not a bid bond will be forfeited.
- (2) The amount of liquidated damages collected will have no effect on the determination of allowable and unallowable costs, except as described by Section III.F.(5)(d) of these regulations.
- (3) Interest income on DWSIRLF payments to loan recipients will have no effect on the determination of allowable and unallowable costs.
- (4) The loan recipient must receive all income generated from use of the project facilities.

## APPENDIX B

### Recommended Allowances for Facilities Planning, Design and Construction Phase Professional Services

#### A. Recommended Allowances for Facilities Planning and Design.

The recommended allowance for facilities planning and design will be determined using Table 1 of this Appendix. This table is not intended to be used to determine the consulting engineer's actual compensation for facilities planning and design services. Compensation for these services should be based upon the nature, scope, and complexity of the services required for the project.

Table 1 includes a recommended range for engineering costs during facilities planning and design, which the loan applicant/recipient should consider while evaluating the engineer's proposal. If the engineer's proposal exceeds the normal range the loan applicant/recipient should consider requiring the engineer to justify why the project is more difficult than normal. The actual compensation justified for a particular project may be more or less than the suggested range of the allowance for these services shown in Table 1.

If the consulting engineer and loan applicant/recipient determine that the maximum recommended allowance calculated using Table 1 of this Appendix does not adequately reflect the nature, scope, and complexity of the services required for the project, the consulting engineer may submit a detailed cost proposal, in such format as required by the Department, justifying a compensation amount greater than Table 1 recommends. If, in the Department's opinion the detailed cost proposal justifies such, the Department will approve an allowance for facilities planning and design greater than those recommended in Table 1. The decision of the Department in this matter will be final.

Projects for which the loan applicant/recipient must acquire easements or real property in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act may receive an additional 1% above the recommended maximum percentages shown in Table 1 for planning and design allowances. Also, projects for which a value engineering study is conducted may receive an additional 3% above the recommended maximum percentages shown in Table 1 for the planning and design allowance.

#### B. Recommended Allowance for Construction Phase Professional Services.

The Allowance for Construction Phase Professional Services includes costs for engineering services during bidding, construction, and post-construction phases, observation during construction, loan administration (payment processing, ~~MBE/WBE~~ DBE compliance, etc.), and other services (i.e. legal, audit, etc.) that are associated with the construction of the DWSIRLF project. The recommended allowance for construction phase professional services will be determined using Table 2 of this Appendix.

This table is not intended to be used to determine the actual compensation for construction phase professional services. Compensation for these professional services should be based upon the nature, scope, and complexity of the services required for the project.

Table 2 separates the Total Recommended Allowance for Construction Phase Professional Services shown in the far right hand column into three types of services: engineering, loan administration, and other services and provides suggested ranges for each of these services depending upon the complexity of the project. The loan applicant/recipient should consider these recommended ranges when evaluating proposals for these services. If the proposals exceed the normal ranges for any of these services the loan applicant/recipient should consider requiring the professional to justify why the project is more difficult than normal. The actual compensation justified for a particular project may be more or less than the suggested range of the allowance for these services shown in Table 2.

If the consulting engineer and loan applicant/recipient determine that the maximum recommended allowance calculated using Table 2 of this Appendix does not adequately reflect the nature, scope, and complexity of the services required for the project, the consulting engineer may submit a detailed cost proposal, in such format as required by the Department, justifying a compensation amount greater than Table 2 recommends. If in the Department's opinion the detailed cost proposal justifies such, the Department will approve an allowance for construction phase professional services greater than those recommended in Table 2. The decision of the Department in this matter will be final.

Although Table 2 shows engineering and loan administration as separate costs, the loan applicant/recipient is not required by these regulations to contract for these services separately. The loan applicant/recipient may wish to have the consulting engineer provide both scopes of services, and under such an arrangement, the engineer's contract should not exceed the total of the suggested ranges for both services.

C. General Guidance for Use of the Allowance Tables in this Appendix.

The estimated and final allowances will be determined in accordance with this Appendix. All allowance percentages will be calculated to four decimal places using linear interpolation. The allowance amount is computed by applying the resulting total allowance percentage to the initial allowable building cost, which is the initial award amount of all prime contracts for construction, equipment, supplies, and testing of the project.

The estimated allowances are to be based on the estimate of the initial allowable building cost from the facilities plan. The final allowances will be determined one time only for each project, based on the initial allowable as-bid cost, and will not be adjusted for subsequent cost increases or decreases.

Following execution of the loan agreement, the loan recipient may request and receive payment for the facilities planning and design allowance and the allowance for construction



phase professional services, in accordance with the procedures described in Section III.H.(5)(a)(c) and (d) of these regulations. Advances of allowances will not be provided.

Table 1

## Recommended Allowances for Facilities Planning and Design

| <u>Allowable Building Cost</u> | <u>Allowances as a Percentage of Building Cost</u><br><u>Based Upon the Difficulty of the Project</u> |
|--------------------------------|---|
|                                | Normal to Difficult   |
| \$ 50,000 or less              | 11.7500% to 13.2000%  |
| \$ 100,000                     | 10.7500% to 12.2000%  |
| \$ 150,000                     | 10.0700% to 11.2519%  |
| \$ 200,000                     | 9.4000% to 10.5000%   |
| \$ 300,000                     | 8.7000% to 9.8042%  |
| \$ 400,000                     | 8.3000% to 9.6312%  |
| \$ 500,000                     | 8.0000% to 9.4417%  |
| \$ 600,000                     | 7.8000% to 9.1467%  |
| \$ 700,000                     | 7.7000% to 9.0297%  |
| \$ 800,000                     | 7.5000% to 8.8089%  |
| \$ 900,000                     | 7.4000% to 8.7472%  |
| \$ 1,000,000                   | 7.2500% to 8.5673%  |
| \$ 1,100,000                   | 7.1030% to 8.3911%  |
| \$ 1,200,000                   | 6.9600% to 8.2185%  |
| \$ 1,300,000                   | 6.8200% to 8.0495%  |
| \$ 1,400,000                   | 6.6800% to 7.8840%  |
| \$ 1,500,000 or greater        | 6.5400% to 7.7219%  |

Table 2  
Recommended Allowances for Construction Phase Professional Services

Allowances as a Percentage of Building Cost  
Based Upon the Difficulty of the Project

| <u>Estimated Building Cost</u> | <u>Engineering Services</u> | <u>Loan Administration</u> | <u>Other Services</u> | <u>Total Allowance for Professional Services</u> |
|--------------------------------|-----------------------------|----------------------------|-----------------------|--|
|                                | Normal to Difficult         | Normal to Difficult        | Normal to Difficult   | Normal to Difficult                              |
| \$ 50,000 or less              | 6.4400% to 11.7250%         | 2.0700% to 3.7688%         | 0.6900% to 1.2563%    | 9.2000% to 16.7500%                              |
| \$ 100,000                     | 5.7400% to 11.725%          | 1.8450% to 3.7688%         | 0.6150% to 1.2563%    | 8.2000% to 16.7500%                              |
| \$ 150,000                     | 5.2850% to 11.725%          | 1.6988% to 3.7688%         | 0.5663% to 1.2563%    | 7.5500% to 16.7500%                              |
| \$ 200,000                     | 4.8300% to 9.9400%          | 1.5525% to 3.1950%         | 0.5175% to 1.0650%    | 6.9000% to 14.2000%                              |
| \$ 300,000                     | 4.4100% to 8.1690%          | 1.4175% to 2.6258%         | 0.4725% to 0.8753%    | 6.3000% to 11.6700%                              |
| \$ 400,000                     | 4.0600% to 7.2800%          | 1.3050% to 2.3400%         | 0.4350% to 0.7800%    | 5.8000% to 10.4000%                              |
| \$ 500,000                     | 3.8150% to 6.5800%          | 1.2263% to 2.1150%         | 0.4088% to 0.7050%    | 5.4500% to 09.4000%                              |
| \$ 600,000                     | 3.5700% to 5.9500%          | 1.1475% to 1.9125%         | 0.3825% to 0.6375%    | 5.1000% to 08.5000%                              |
| \$ 700,000                     | 3.4300% to 5.4600%          | 1.1025% to 1.7550%         | 0.3675% to 0.5850%    | 4.9000% to 07.8000%                              |
| \$ 800,000                     | 3.2900% to 5.0400%          | 1.0575% to 1.6200%         | 0.3525% to 0.5400%    | 4.7000% to 07.2000%                              |
| \$ 900,000                     | 3.2200% to 4.6690%          | 1.0350% to 1.5008%         | 0.3450% to 0.5003%    | 4.6000% to 06.6700%                              |
| \$1,000,000                    | 3.1500% to 4.4800%          | 1.0125% to 1.4400%         | 0.3375% to 0.4800%    | 4.5000% to 06.4000%                              |
| \$1,100,000                    | 3.0815% to 4.2986%          | 0.9905% to 1.3817%         | 0.3302% to 0.4606%    | 4.4022% to 06.1409%                              |

Table 2 (Continued)

## Recommended Allowances For Construction Phase Professional Services

## Allowances as a Percentage of Building Cost

Based Upon the Difficulty of the Project

| <u>Estimated Building Cost</u> | <u>Engineering Services</u> | <u>Loan Administration</u> | <u>Other Services</u> | <u>Total Allowance for Professional Services</u> |
|--------------------------------|-----------------------------|----------------------------|-----------------------|--|
|                                | Normal to Difficult         | Normal to Difficult        | Normal to Difficult   | Normal to Difficult                              |
| \$1,200,000                    | 3.0146% to 4.1246%          | 0.9690% to 1.3258%         | 0.3230% to 0.4419%    | 4.3066% to 5.8923%                               |
| \$1,300,000                    | 2.9492% to 3.9577%          | 0.9479% to 1.2721%         | 0.3160% to 0.4240%    | 4.2131% to 5.6538%                               |
| \$1,400,000                    | 2.8852% to 3.7975%          | 0.9274% to 1.2206%         | 0.3091% to 0.4069%    | 4.1217% to 5.4250%                               |
| \$1,500,000 or greater         | 2.8226% to 3.6438%          | 0.9073% to 1.1712%         | 0.3024% to 0.3904%    | 4.0323% to 5.2054%                               |

## APPENDIX C

### Environmental Review Process

#### A. Facilities Plan Description of Environmental Impacts

Each facilities plan must contain a description of the environmental impacts of the proposed project and any corresponding mitigative measures including, but not necessarily limited to, the following:

- (1) Surface and groundwater resources;
- (2) Archaeological/historical/cultural resources;
- (3) Vegetative/wildlife resources;
- (4) Wetlands and navigable waterways;
- (5) Floodplains;
- (6) Prime or important farmlands;
- (7) Coastal zones;
- (8) Wild and scenic rivers; and
- (9) Air Quality.

#### B. Environmental Review.

The Department will take one or more of the following actions pursuant to the review of the facilities plan description of Environmental Impacts:

##### (1) Categorical Exclusion

The Department will issue a Categorical Exclusion (CE) from environmental review if a project meets all of the following criteria:

- (a) The project includes minor rehabilitation of existing facilities, functional replacement of equipment, or construction of new ancillary facilities adjacent or appurtenant to existing facilities.
- (b) The project will not have a significant adverse effect on the environment.
- (c) The project will not adversely affect cultural resources, habitats of endangered or threatened species, or environmentally important natural resource areas.
- (d) The project is not expected to cause significant public controversy.

The Department may revoke a categorical exclusion at any time if significant adverse information becomes available.

##### (2) Finding of No Significant Impact (FONSI) on the Environment

The Department will issue a Finding Of No Significant Impact (FONSI) and an Environmental Assessment (EA) when, based upon review of the environmental impacts in the facilities plan, it appears that a project will not have a significant adverse environmental impact, but does not qualify for a CE. The ~~environmental assessment~~ EA will describe the existing environment, the purpose and need for the project, the project to be built, the alternatives analyzed including no action, the references consulted, the expected environmental impacts of the project, the actions necessary to minimize expected adverse impacts, and the cost to build and operate the project.

(3) Amendment to a ~~Finding of No Significant Impact~~ FONSI to the Environment

FONSI amendments are occasionally needed to describe changes to proposed facilities that have already been described in a FONSI. The ~~environmental assessment~~ EA that accompanies the amendment will describe the changes and any expected new impacts on the environment due to the changes. The original ~~environmental assessment~~ EA will be reissued with the ~~environmental assessment~~ EA amendment in those cases where it is deemed to be necessary to assure clarity.

(4) Environmental Impact Statement (EIS)

If the Department determines that an environmental impact statement (EIS) is needed, the document will be prepared in general conformance with EPA Regulation 40 CFR Part 6, or as deemed appropriate by the Department.

(5) Reaffirmation of an Environmental Action

If five years will pass between the issuance of a CE, FONSI, Amendment to a FONSI, or an EIS and the offer of DWSIRLF funding, the environmental impact of the project will be re-evaluated. However, a re-evaluation may not be required when the most recent Amendment to a FONSI or EIS is less than five years old. If there have been no significant changes, the Department will issue a reaffirmation of the environmental action. If the original environmental action cannot be reaffirmed, the Department will issue a new environmental action, as appropriate.

(6) No Further Action

The Department will issue a CE, FONSI, or EIS on all DWSIRLF projects. If there are significant changes in the project after the issuance of the environmental documents, those changes will be described in an Amendment to a FONSI. Some changes are minor, however, and the Department may determine that a separate Amendment need not be issued. Such minor changes may include but are not limited to:

- (a) Adding work that would otherwise qualify for a categorical exclusion.

- (b) Changes in the size of pump stations, storage facilities, wells, distribution lines, etc.
- (c) Minor changes in the size of water treatment unit processes.
- (d) Minor rerouting of distribution lines when the new route i) will be mostly on public property and ii) will not adversely affect cultural resources, habitats of endangered or threatened species, or environmentally important natural resource areas. All affected property owners must be notified by the loan recipient.
- (e) Changes in the cost of the project, the average monthly user charge, or the method of financing.

C. Issuance of the Environmental Action.

Copies of all environmental actions will be issued to the appropriate intergovernmental review agencies listed in Appendix K; other agencies must be contacted as needed. Copies must also be sent to any individuals or groups requesting them. All environmental actions will also be published in an appropriate local newspaper.

All environmental actions will provide for at least a 30 day period from the day of issuance to receive comments from agencies, groups, or individuals. All such comments will be evaluated by the Department before finalizing any environmental action.

Immediately after issuing an environmental action and before the comment period has expired a facilities plan may be conditionally approved, and a loan agreement may be conditionally offered. In such a case, no funds will be transferred to the loan recipient, and authority to award construction contracts will not be given until the comment period has expired and all substantial adverse comments have been addressed.

D. Resolution of Adverse Comments.

Adverse comments received as a result of the environmental review process will be addressed in the following manner:

- (1) The Department will first require the loan recipient to resolve the adverse comments, subject to Department approval.
- (2) If the loan recipient is unable to resolve the adverse comments and secure approval, the Department will render a decision concerning the adverse comments.
- (3) Should the loan recipient or the party which originally made the adverse comments desire to appeal the above decision, a request for an informal hearing must be received by the Department within 30 days after the date of such decision. Upon receipt of such a request, an informal hearing will be held with staff members, as

designated by the Board Chairman, and the affected parties. The Board Chairman, or his designee, will render a decision on the appeal as a result of the informal hearing.

- (4) Should the loan recipient or the party which originally made the adverse comments desire to appeal the above informal hearing decision, a request for a formal hearing by the Board must be received by the Department within 30 days after the date of such decision. Upon receipt of such a request, the ~~Local Governments and Rural Water Systems Improvements~~ Board will hold a formal hearing to consider the matter and will render a decision.
- (5) Appeals of the above formal hearing decision may be made to the Chancery Court in accordance with state law.



## APPENDIX D

### Procurement Requirements for DWSIRLF Loan Recipients

In the procurement of all construction, equipment, materials, supplies, professional services and non-professional services and all other costs related to the DWSIRLF project, all loan recipients must comply with state purchasing laws as they apply to local governments.

The procurement and conduct of all professional engineering and land surveying services must also be in accordance with the Code of Conduct and other guidance and interpretations established by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors.

The procurement of all construction contracts must also be in accordance with the rules and regulations of the State Board of Contractors and other guidance and interpretations established by the Mississippi State Board of Contractors.

All loan recipients must submit a procurement certification, as required by the Department, indicating that all of the above referenced requirements have been met. Should it be determined that any of the above procurement requirements are violated, the Department may determine that the related costs are unallowable and may require repayment of all DWSIRLF Loan funds paid for such costs, in accordance with Section III.H.(6) of these regulations.



## APPENDIX E

### DWSIRLF Disadvantaged Business Enterprise (DBE) Requirements (formerly referred to as Minority and Women's Business Enterprise) (~~MBE/WBE~~) Requirements

The Department will establish "fair share" objectives for participation by ~~minority and women's disadvantaged~~ business enterprises (DBE) in DWSIRLF funded projects. The loan recipient must undertake the following steps in the procurement of non-professional services, equipment, supplies, and construction:

- (1) Include qualified ~~minority and women's~~ disadvantaged businesses on solicitation lists.
- (2) Assure that ~~minority and women's~~ disadvantaged businesses are solicited whenever they are potential sources.
- (3) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged ~~minority and women's~~ businesses.
- (4) Establish delivery schedules when practical which will encourage participation by disadvantaged ~~minority and women's~~ businesses.
- (5) Use the services and assistance of the Office of Minority Business Enterprise of the Mississippi Department of Economic and Community Development and the Minority Business Development Centers of the U. S. Department of Commerce, as appropriate.
- (6) Require the contractor to take the steps listed above, if the contractor awards subagreements.

The loan recipient, registered engineer, and prime contractor(s) must also follow ~~MBE/WBE~~ DBE guidance documents provided by the Department, unless otherwise approved by the Department.

DBE's ~~Minority and women's business enterprises~~ must be certified by the Mississippi Office of Minority Business Enterprises, the Mississippi Department of Transportation, or other agencies recognized by these Departments.

## APPENDIX F

### Debarment and Suspension

The Board is prohibited from entering into loan agreements with loan applicants that have been debarred or suspended by any state or federal agency.

Loan recipients are prohibited from entering into contractual agreements with individuals, businesses, organizations, or any other entities that have been debarred or suspended by any state or federal agency.

Loan recipients are responsible for ensuring that prime contractors utilized on the project are not debarred or suspended. Likewise, prime contractors are responsible for ensuring that subcontractors utilized on the project are not debarred or suspended.

Anyone may contact the Board concerning the existence of a cause for debarment or suspension. The Board may refer the matter to the State Attorney General or other appropriate office for further investigation. If, after review or investigation, the Board reasonably believes that a cause for debarment exists, the Board may propose debarment or suspension and may initiate procedures similar to, but not necessarily identical to, federal regulation 40 CFR Part 32: Debarment and Suspension Under EPA Assistance Programs.

Such above described debarment or suspension actions will not affect existing executed contractual agreements, unless such agreements have been terminated or suspended under the terms of the agreement by the loan recipient.

## APPENDIX G

### DWSIRLF Disputes Procedures

Only DWSIRLF loan recipients may submit a notice of dispute (disagreement) with a decision made by the Department, with the exception of decisions regarding Appendix C, Environmental Review Process, of these regulations. The following procedures will be used to resolve disputes between the loan recipient and the Department.

- (1) The loan recipient must submit a written notice of dispute with a Department decision, including a summary of the dispute and reasons the loan recipient believes the Department decision should be reversed.
- (2) The Department will then render a written decision on the dispute and will include reasons for the decision.
- (3) Should the loan recipient desire to appeal the second Department decision, a request for an informal hearing must be received by the Department within 30 days after the date of that decision. Upon receipt of such a request, an informal hearing will be held with staff members, as designated by the Board Chairman, and the affected parties. The Board Chairman, or his designee, will render a decision on the appeal as a result of the informal hearing.
- (4) Should the loan recipient desire to appeal the above informal hearing decision, a request for a formal hearing before the ~~Local Governments and Rural Water Systems Improvements~~ Board must be received by the Department within 30 days after the date of such decision. Upon receipt of such a request, the Board will hold a formal hearing to consider the matter and will render a decision.
- (5) Appeals of the above formal hearing decision may be made to the Chancery Court in accordance with state law.

## APPENDIX H

### Cross-Cutting Federal Laws and Authorities

A number of other federal laws and authorities also apply to projects and activities funded by the DWSIRLF. These apply by virtue of their own authority, are referred to as cross-cutting federal laws and authorities, and are listed below:

#### Environmental:

- Archeological and Historical Preservation Act of 1974, PL 93-291
- Clean Air Act, 42 U.S.C. 7506(c)
- Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.
- Coastal Zone Management Act of 1972, PL 92-583, as amended
- Endangered Species Act 16 U.S.C. 1531, et seq.
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands
- Farmland Protection Policy Act, 7 U.S.C. 4201 et seq.
- Fish and Wildlife Coordination Act, PL 85-624, as amended
- National Environmental Policies Act of 1969, 42 U.S.C. 4321 et seq.
- National Historic Preservation Act of 1966, PL 89-665, as amended
- Safe Drinking Water Act, 42 U.S.C. 300 et seq., Public Law 93-523, as amended
- Wild and Scenic Rivers Act, PL 90-542, as amended
- Historic Sites Act of 1935, PL 74-292
- "National Interim Primary Drinking Water Regulations", Environmental Protection Agency, Water Programs, Federal Register 40, No. 246, December 24, 1975, 59566 - 59574.
- "Secondary Maximum Contaminant Levels", Environmental Protection Agency, Water Programs, Federal Register 42, March 31, 1977, 17144 - 17146.

Economic:

- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended

Social Legislation:

- Age Discrimination Act, PL 94-135
- Civil Rights Act of 1964, PL 88-352
- Executive Order 11246, Equal Employment Opportunity
- Executive Orders 11625 and 12138, Women's and Minority Business Enterprise
- Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250)
- Executive Order 12898, Environmental Justice

Miscellaneous Authority:

- Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, PL 91-646, as implemented by Federal Regulation 49 CFR Part 24.101(a)(1) and (2) as applicable.
- Executive Order 12549 - Debarment and Suspension
- Tax Reform Act of 1986





## APPENDIX I

### Waste, Fraud and Abuse

The loan recipient is responsible for preventing, detecting, and prosecuting waste, fraud, abuse, and all other corrupt practices which occur in relation to the DWSIRLF loan project.

If the loan recipient becomes aware of allegations, evidence, or the appearance of corrupt practices, the loan recipient must:

- (1) Immediately inform the Department in writing.
- (2) Promptly pursue available state and local legal, administrative, and contractual remedies.

The Department may disallow costs under the loan agreement where it is determined that such costs are related to waste, fraud, abuse or other corrupt practices. The Department may also require repayment of DWSIRLF loan funds paid for such costs in accordance with Section III.H.(6) of these regulations.



## APPENDIX J

### DWSIRLF Loan Recipient Accounting and Auditing Requirements

All DWSIRLF loan recipients must maintain project accounts in accordance with generally accepted government accounting standards, as defined by the Guidelines of the Municipal Accounting and Audit Manual, as prescribed by the State Auditor's Office. Charges to the project account must be properly supported, related to eligible construction costs, and documented by appropriate records. These project accounts must be maintained as separate accounts.

All contracts for professional services, construction, equipment, and supplies must include an access to audit clause which gives the Department and its representatives access to and the right to audit, inspect, copy and examine books, financial records and other documents relating directly to the receipt and disbursement of DWSIRLF funds.

## APPENDIX K

### Intergovernmental Review Process

The following outlines the Department's requirements for compliance with the Intergovernmental Review Process for DWSIRLF projects.

#### A. Intergovernmental Review Agencies:

- (1) Mississippi Department of Archives and History (for archaeological/cultural review)
- (2) Mississippi Natural Heritage Program (for vegetative/wildlife review)
- (3) U.S. Army Corps of Engineers, Regulatory Functions Branch [for Section 404 (wetlands), Section 10 (navigable waterways), and floodplain impact review]
- (4) Mississippi Department of Marine Resources (Jackson, Harrison, and Hancock County Projects Only; for shellfish review and Mississippi Coastal Program review)
- (5) U. S. Fish and Wildlife Service (Jackson, Harrison, and Hancock County projects only; for Coastal Barriers Resources Act review)
- (6) U. S. Forest Service (projects located in a designated Wild and Scenic River Basin only; for Wild and Scenic Rivers review)

#### B. Facilities Planning

During preparation of the facilities plan, the appropriate intergovernmental review agencies should be consulted about the proposed project area concerning the existence of any known or possible archaeological/cultural sites, endangered vegetation/wildlife, wetlands, floodplain impacts, wild/scenic river impacts, shellfish/coastal program impacts, or coastal barriers resources impact. If feasible, the project should avoid negative impacts on areas for which a concern has been expressed by an intergovernmental review agency. If it is not feasible to avoid negative impacts on these areas, the appropriate intergovernmental review agency should be consulted concerning the probability of obtaining clearance to construct the selected plan. Where an agency expresses substantial concern that clearance of the selected plan may not be obtained, appropriate modification, mitigation, and/or other sites must be pursued in coordination with the Department and the appropriate agency prior to submission of the facilities plan. This effort should avoid completion of a facilities plan which may not later receive intergovernmental review clearance. However, the loan recipient should recognize that subsequent surveys, applications, or other information may result in further intergovernmental review agency concerns which must be addressed prior to clearance.

The facilities plan must be submitted to the appropriate intergovernmental review agencies with a request for written comments and a determination on the need for archaeological/cultural resource surveys, vegetative/wildlife surveys, Section 404/Section 10 permits, U. S. Forest Service permits, Mississippi Department of Marine Resources permits,

and U.S. Fish and Wildlife approval or other actions. The facilities plan or the transmittal letter must include a map showing the proposed construction and the land use (i. e. residential, commercial, industrial, farmland, pasture, wooded, wetlands, or other) in the areas of construction. The Department strongly suggests that photographs of the areas of construction also be included in order to expedite these determinations. The Department must be copied on the transmittal letters (including all attached maps, photographs, etc.) to all intergovernmental review agencies. These agencies should provide written comments and a determination on the need for surveys, permits, or other actions.

All applicable intergovernmental review agency comment letters must be included and addressed in the facilities plan.

### C. Loan Application

If the appropriate intergovernmental review agency has determined these actions are necessary, completed archaeological/cultural surveys must be submitted to the Mississippi Department of Archives and History for approval; completed vegetative/wildlife surveys must be submitted to the Mississippi Natural Heritage Program for approval; and completed Section 404/Section 10 permit applications must be submitted to the U.S. Army Corps of Engineers (and the Mississippi Department of Marine Resources for Jackson, Harrison, and Hancock County projects). The Department must be copied on the transmittal letters to the intergovernmental review agencies.

A completed Standard Form 424 (Application For Federal Assistance), a brief narrative describing the project, a map showing the location of all proposed construction, the archaeological/cultural and vegetative/wildlife survey approval letters, and copies of the issued Section 404/Section 10 Permits and Mississippi Department of Marine Resources Permits (or letters stating that surveys or permits are not required) must be submitted to the Department, the Mississippi Department of Finance & Administration, Office of Policy Development and New Initiatives, and the local Planning and Development District. The Office of Policy and New Initiatives will solicit comments from agencies and other interested parties and will provide the applicant with a clearance form, as appropriate.

The clearance form from the Office of Policy Development and New Initiatives, along with any comments received, must be submitted to the Department with the loan application.



## APPENDIX L

### DWSIRLF Procurement Protest Procedures

This Appendix sets forth the process for the resolution of procurement protests filed with the loan recipient by an adversely affected party. The Loan Recipient's protest procedures must include the requirements of this Appendix.

- (1) Prior to advertisement for bids, the loan recipient must establish its own procedures for prompt consideration of initial protests concerning solicitations or contract awards. A "protest" is a written complaint concerning the loan recipient's solicitation or award of a contract. The protest must be filed with the loan recipient by a party with a direct financial interest adversely affected by a loan recipient's procurement action and must be filed in accordance with and within the time frame established by the loan recipient's protest procedures.
- (2) Any party who transmits any document concerning the protest during the course of a protest and protest resolution must simultaneously furnish all other affected parties and the Department with a copy of all documents in the transmittal.
- (3) Upon receipt of a protest, the loan recipient must make a determination on the protest in accordance with the loan recipient's protest procedures within thirty (30) calendar days after such protest, or sooner if so required by the loan recipient's procurement protest procedures.
- (4) The party with a direct financial interest adversely affected by a loan recipient's determination of the protest may appeal such a determination only through the appropriate court of competent jurisdiction, provided such appeal is initiated within seven (7) calendar days after receipt of the determination.
- (6) Any delay due to a protest or protest resolution will not relieve the loan recipient of the requirement to meet the project schedule established in the loan agreement, nor will such delays prevent the Department from pursuing the remedies for default established in the loan agreement.

## APPENDIX M

### Related State Laws and Regulations

The loan recipient must comply with the following related state laws and regulations during the planning, design, construction, and operation of the project. The listing below does not relieve the loan recipient from the responsibility of compliance with all applicable laws and regulations, whether listed or not.

- "Mississippi Safe Drinking Water Law of 1976", Section 41-26-1 through 41-26-21, Mississippi Code of 1972, annotated.
- "Primary Drinking Water Regulations", latest edition, Mississippi State Board of Health Environmental Regulations, Division 300 - Water Supply, Part 301, Public Water Systems.
- "Municipal and Domestic Water and Wastewater System Operator's Certification Act of 1986", Section 21-27-201 through 21-27-221, Mississippi Code of 1972, annotated.
- Regulations Governing the Certification of Municipal and Domestic Water System Operators", latest edition, Mississippi State Board of Health Environmental Regulations, Division 300 - Water Supply, Part 302.



## APPENDIX N

### National Pollutant Discharge Elimination System (NPDES) and Siting Criteria Regulations

The following requirements apply to those drinking water treatment facilities that have or will construct wastewater treatment facilities necessary to treat waste generated by their drinking water treatment facilities.

The loan recipient must insure that all current regulations of the Commission on Environmental Quality and the Environmental Quality Permit Board are complied with during the planning, design, and construction of any wastewater treatment facilities associated with this DWSIRLF loan project. These regulations include "Wastewater Permit Regulations for National Pollutant Discharge Elimination System (NPDES), Underground and Injection Control (UIC) and State Operating Permits" and "Guidelines for Review of Siting Criteria in Applications for Air and Water Pollution Control Permits". It is the loan recipient's responsibility to insure that the project is in compliance with these regulations and all future amendments. Also, the loan recipient must comply with the following requirements:

- (1) All planning documents submitted to the Department for review must clearly indicate that a 150 foot buffer zone between the wastewater treatment facility and the nearest adjoining property line is provided. This must be shown on a plan view of the drinking water treatment facility site. If it is not possible to provide a 150 foot buffer zone, the planning document must indicate that a written waiver from the adjoining property owner(s) will be necessary.
- (2) All design plans submitted to the Department for review must clearly display the 150 foot buffer zone for the wastewater treatment facility. If it is not possible to provide a 150 foot buffer zone, a written waiver from the adjoining property owner(s) must also accompany the design plans. When a waiver is necessary, it is strongly suggested that this be obtained prior to substantial work on the treatment facility design.

An NPDES permit application must accompany all design plans for wastewater treatment facilities, if a permit or permit modification is required.

- (3) All appraisals, negotiations, purchase agreements, and site certificates must include the required buffer zones, unless a waiver was previously submitted along with the design plans.

## APPENDIX O

### Contract Claims

The Loan Recipient acknowledges and agrees that the Department is not a party, in any manner whatsoever, to any contract between the DWSIRLF Loan Recipient and the construction contractor(s), the consulting engineer(s), the attorney(s), the equipment supplier(s), the subcontractor(s) or any other parties of any kind whatsoever (hereinafter collectively referred to as “vendor”). The Loan Recipient also acknowledges and agrees that any benefit to vendors contracting with the Loan Recipient arising from, or associated with this contract is strictly incidental and all such vendors are not, and are not intended to be considered as third party beneficiaries under any agreement between the Department and the Loan Recipient.

Upon execution of any contract between the Loan Recipient and any other party in regard to a DWSIRLF funded project, the Department does not assume any authority, duties, responsibility, or liability in contract claims identification, negotiation, resolution, or any other actions regarding contract claims under the contract(s) between the Loan Recipient and any other party.

No actions taken by the Department, either directly or indirectly, in regard to the DWSIRLF loan funded project constitute or establish any determinations, authority, duty, responsibility, or liability under the contract(s) between the Loan Recipient and any other party. The Loan Recipient agrees and warrants that it shall include language, approved by the Department, in its contracts with its vendors requiring the Loan Recipient and its vendors to acknowledge and agree that the Department is not a party, in anyway whatsoever, to the contract between the Loan Recipient and its vendors. Such language shall require the Loan Recipient and vendors to acknowledge and agree that the role of the Department is strictly that of a lender, that the vendors are not and are not intended to be considered a third party beneficiary under any agreement between the Department and the Loan Recipient. Additionally, such language shall also require the Loan Recipient and its vendors to acknowledge and agree that any action taken by the Department in its role as administrator for the revolving loan programs, or in its separate and distinct role as regulator, shall not in any way change or alter its position as that of lender.

The Loan Recipient and the contracting party must resolve all claims and contract disputes by negotiation, arbitration, litigation, or other means as provided in the contract documents and state law, prior to submission of any change order to the Department for review and approval in order to obtain a DWSIRLF loan eligibility/allowability determination.